

ASSEMBLY BILL

No. 237

Introduced by Assembly Member Figueroa

February 6, 1997

An act to amend Sections 139.5 and 4644 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 237, as introduced, Figueroa. Workers' compensation: vocational rehabilitation services: counseling fees.

(1) Existing law requires the Administrative Director of the Division of Workers' Compensation to establish a vocational rehabilitation unit, that includes appropriate professional staff, and that has specified duties, including a requirement to establish, on or before July 1, 1994, the maximum aggregate permissible fees that may be charged for counseling that shall not exceed \$4,500 and that shall be included within the \$16,000 cap on the dollar amount of living expenses, counseling fees, training, maintenance allowance, and costs associated with, or arising out of, vocation rehabilitation services, except temporary disability payments, available to an injured employee.

This bill would eliminate the requirement that the director establish the maximum aggregate permissible fees that may be charged for counseling, and instead would provide that, commencing January 1, 1998, the maximum aggregate permissible fees that may be charged for counseling shall not exceed \$4,500 and would exclude these fees from the \$16,000 cap.

(2) Existing law provides that if the employee is determined to be a qualified injured worker, and the employer notifies the injured worker that the employer will be unable to provide modified or alternative work to that injured worker, the qualified rehabilitation representative and the employee, jointly, shall develop an agreed-upon vocational rehabilitation plan. Existing law further provides that these plans shall be completed within an 18-month period after approval of the plan and shall not include a period of job placement exceeding 60 days.

This bill, instead, would provide that these plans shall be completed within an 18-month period after commencement of the plan, and would prohibit those plans that include a vocational retraining component from including a period of job placement exceeding 60 days.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 139.5 of the Labor Code is
2 amended to read:

3 139.5. (a) The administrative director shall establish
4 a vocational rehabilitation unit, which shall include
5 appropriate professional staff, and which shall have the
6 following duties:

7 (1) To foster, review, and approve vocational
8 rehabilitation plans developed by a qualified
9 rehabilitation representative of the employer, insurer,
10 state agency, or employee. Plans agreed to by the
11 employer and employee do not require approval by the
12 vocational rehabilitation unit unless the employee is
13 unrepresented.

14 (2) To develop rules and regulations, to be
15 promulgated by the administrative director, providing
16 for a procedure in which an employee may waive the
17 services of a qualified rehabilitation representative
18 where the employee has been enrolled and made
19 substantial progress toward completion of a degree or
20 certificate from a community college, California State



1 University, or the University of California and desires a
2 plan to complete the degree or certificate. These rules
3 and regulations shall provide that any such waiver as well
4 as any plan developed without the assistance of a qualified
5 rehabilitation representative must be approved by the
6 rehabilitation unit.

7 (3) To develop rules and regulations, to be
8 promulgated by the administrative director, which would
9 expedite and facilitate the identification, notification, and
10 referral of industrially injured employees to vocational
11 rehabilitation services.

12 (4) To coordinate and enforce the implementation of
13 vocational rehabilitation plans.

14 (5) To develop a fee schedule, to be promulgated by
15 the administrative director, governing reasonable fees
16 for vocational rehabilitation services provided on and
17 after January 1, 1991. ~~The initial fee schedule~~
18 ~~promulgated under this paragraph shall be designed to~~
19 ~~reduce the cost of vocational rehabilitation services by 10~~
20 ~~percent from the level of fees paid during 1989. On or~~
21 ~~before July 1, 1994, the administrative director shall~~
22 ~~establish~~ *Commencing January 1, 1998*, the maximum
23 aggregate permissible fees that may be charged for
24 counseling. ~~Those fees shall not exceed four thousand five~~
25 ~~hundred dollars (\$4,500) and shall be included within~~
26 ~~excluded from the sixteen thousand dollar (\$16,000) cap~~
27 ~~specified in subdivision (c).~~ The fee schedule shall
28 establish maximum aggregate permissible fees for
29 evaluation, plan development, and ~~job placement~~
30 ~~services plan implementation.~~

31 (6) To develop standards, to be promulgated by the
32 administrative director, for governing the timeliness and
33 the quality of vocational rehabilitation services.

34 (b) The salaries of the personnel of the vocational
35 rehabilitation unit shall be fixed by the Department of
36 Personnel Administration.

37 (c) When an employee is determined to be medically
38 eligible and chooses to participate in a vocational
39 rehabilitation ~~program~~ services, he or she shall continue
40 to receive temporary disability indemnity payments only

1 until his or her medical condition becomes permanent
2 and stationary and, thereafter, may receive a
3 maintenance allowance. Rehabilitation maintenance
4 allowance payments shall begin after the employee's
5 medical condition becomes permanent and stationary,
6 upon a request for vocational rehabilitation services.
7 Thereafter, the maintenance allowance shall be paid for
8 a period not to exceed 52 weeks in the aggregate, except
9 where the overall cap on vocational rehabilitation
10 services can be exceeded under this section or Section
11 4642 or subdivision (d) or (e) of Section 4644.

12 The employee also shall receive additional living
13 expenses necessitated by the vocational rehabilitation
14 services, together with all reasonable and necessary
15 vocational training, at the expense of the employer, but
16 in no event shall the expenses, ~~counseling fees~~, training,
17 maintenance allowance, and costs associated with, or
18 arising out of, vocational rehabilitation services incurred
19 after the employee's request for vocational rehabilitation
20 services, except temporary disability payments, exceed
21 sixteen thousand dollars (\$16,000). The administrative
22 director shall adopt regulations to ensure that the
23 continued receipt of vocational rehabilitation
24 maintenance allowance benefits is dependent upon the
25 injured worker's regular and consistent attendance at,
26 and participation in, his or her vocational rehabilitation
27 program.

28 (d) The amount of the maintenance allowance due
29 under subdivision (c) shall be two-thirds of the
30 employee's average weekly earnings at the date of injury
31 payable as follows:

32 (1) The amount the employee would have received as
33 continuing temporary disability indemnity, but not more
34 than two hundred forty-six dollars (\$246) a week for
35 injuries occurring on or after January 1, 1990.

36 (2) At the employee's option, an additional amount
37 from permanent disability indemnity due or payable,
38 sufficient to provide the employee with a maintenance
39 allowance equal to two-thirds of the employee's average
40 weekly earnings at the date of injury subject to the limits

1 specified in subdivision (a) of Section 4453 and the
2 requirements of Section 4661.5. In no event shall
3 temporary disability indemnity and maintenance
4 allowance be payable concurrently.

5 If the employer disputes the treating physician's
6 determination of medical eligibility, the employee shall
7 continue to receive that portion of the maintenance
8 allowance payable under paragraph (1) pending final
9 determination of the dispute. If the employee disputes
10 the treating physician's determination of medical
11 eligibility and prevails, the employee shall be entitled to
12 that portion of the maintenance allowance payable under
13 paragraph (1) retroactive to the date of the employee's
14 request for vocational rehabilitation services. These
15 payments shall not be counted against the maximum
16 expenditures for vocational rehabilitation services
17 provided by this section.

18 (e) No provision of this section nor of any rule,
19 regulation, or vocational rehabilitation plan developed or
20 promulgated under this section nor any benefit provided
21 pursuant to this section shall apply to an injured
22 employee whose injury occurred prior to January 1, 1975.
23 Nothing in this section shall affect any plan, benefit, or
24 program authorized by this section as added by Chapter
25 1513 of the Statutes of 1965 or as amended by Chapter 83
26 of the Statutes of 1972.

27 (f) The time within which an employee may request
28 vocational rehabilitation services is set forth in Sections
29 5405.5, 5410, and 5803.

30 (g) An offer of a job within state service to a state
31 employee in State bargaining unit 1, 4, 15, 18, or 20 at the
32 same or similar salary and the same or similar geographic
33 location is a prima facie offer of vocational rehabilitation
34 under this statute.

35 (h) It shall be unlawful for a qualified rehabilitation
36 representative or rehabilitation counselor to refer any
37 employee to any work evaluation facility or to any
38 education or training program if the qualified
39 rehabilitation representative or rehabilitation counselor,
40 or a spouse, employer, coemployee, or any party with

1 whom he or she has entered into contract, express or
2 implied, has any proprietary interest in or contractual
3 relationship with the work evaluation facility or
4 education or training program. It shall also be unlawful
5 for any insurer to refer any injured worker to any
6 rehabilitation provider or facility if the insurer has a
7 proprietary interest in the rehabilitation provider or
8 facility or for any insurer to charge against any claim for
9 the expenses of employees of the insurer to provide
10 vocational rehabilitation services unless those expenses
11 are disclosed to the insured and agreed to in advance.

12 (i) Any charges by an insurer for the activities of an
13 employee who supervises outside vocational
14 rehabilitation services shall not exceed the vocational
15 rehabilitation fee schedule, and shall not be counted
16 against the overall cap for vocational rehabilitation or the
17 limit on counselor's fees provided for in this section.
18 These charges shall be attributed as expenses by the
19 insurer and not losses for purposes of insurance rating
20 pursuant to Article 2 (commencing with Section 11730)
21 of Chapter 3 of Division 2 of the Insurance Code.

22 (j) Any costs of an employer of supervising vocational
23 rehabilitation services shall not be counted against the
24 overall cap for vocational rehabilitation or the limit on
25 counselor's fees provided for in this section.

26 SEC. 2. Section 4644 of the Labor Code is amended to
27 read:

28 4644. (a) The liability of the employer for vocational
29 rehabilitation services shall terminate when any of the
30 following events occur:

31 (1) An employee who has received notice of potential
32 eligibility to participate in a rehabilitation plan under
33 Section 4637 declines vocational rehabilitation services in
34 the form and manner prescribed by the administrative
35 director.

36 (2) A qualified injured worker completes a vocational
37 rehabilitation plan except as otherwise provided in
38 subdivisions (c) and (d).

39 (3) The qualified injured worker unreasonably failed
40 to complete a vocational rehabilitation plan.

1 (4) An employee has not requested vocational
2 rehabilitation services within 90 days of the notification
3 that the employee is medically eligible for vocational
4 rehabilitation services. The liability of the employer for
5 vocational rehabilitation services shall not terminate
6 under this paragraph unless the employer, not earlier
7 than 45 days nor later than 70 days after the employee's
8 receipt of the notice required by Section 4637, reminds
9 the employee of his or her right to vocational
10 rehabilitation services or until the 21st day after the
11 employee receives the reminder notification. The
12 reminder notification shall be in writing, in the form and
13 manner prescribed by the administrative director, and
14 shall be served by certified mail. The provisions of this
15 paragraph shall not apply if the employee shows he or she
16 was unable to comprehend the consequences of failing to
17 timely request vocational rehabilitation services, or that,
18 because of conditions beyond the control of the
19 employee, the employee was unable to exercise his or her
20 right to accept or decline vocational rehabilitation
21 services.

22 (5) The employer offers, and the employee accepts or
23 rejects, in the form and manner prescribed by the
24 administrative director, modified work lasting at least 12
25 months, provided that an employer who offers modified
26 work that is available for the 12-month period required by
27 this paragraph meets the requirements of this paragraph
28 even if the employee voluntarily quits prior to the end of
29 that 12-month period.

30 (6) The employer offers and the employee accepts or
31 rejects, in the form and manner prescribed by the
32 administrative director, alternative work meeting all of
33 the following conditions:

34 (A) The employee has the ability to perform the
35 essential functions of the job provided.

36 (B) The job provided is in a regular position lasting at
37 least 12 months. An employer who offers alternative work
38 that is available for the 12-month period required by this
39 paragraph meets the requirements of this paragraph

1 even if the employee voluntarily quits prior to the end of
2 the 12-month period.

3 (C) The job provided offers wages and compensation
4 that are within 15 percent of those paid to the employee
5 at the time of injury.

6 (D) The job is located within reasonable commuting
7 distance of the employee's residence at the time of injury.

8 (7) The employer offers, and the employee accepts, in
9 the form and manner prescribed by the administrative
10 director, work not meeting the conditions of paragraph
11 (5) or (6) provided that the work lasts at least 12 months.
12 The employee shall be required to reject the offer, in the
13 form and manner prescribed by the administrative
14 director, in order for the employee to be eligible for
15 vocational rehabilitation services. An employer who
16 offers work that is available for the 12-month period
17 meets the requirements of this paragraph, even if the
18 employee voluntarily quits prior to the end of that
19 12-month period.

20 (b) Nothing in this article shall preclude the deferral
21 or interruption of vocational rehabilitation services upon
22 agreement of the employee and employer or, if no
23 agreement can be reached, upon a good cause
24 determination by the administrative director.

25 (c) Except as provided in this section, vocational
26 rehabilitation plans prepared pursuant to Section 4638
27 shall be limited to one plan per injured worker. The plans
28 shall be completed within an 18-month period after
29 ~~approval~~ *commencement* of the plan, ~~and~~. *Those plans*
30 *that include a vocational retraining component* shall not
31 include a period of job placement exceeding 60 days. The
32 employee shall be entitled to one additional vocational
33 rehabilitation plan only if the original plan is determined
34 to be inappropriate due to one of the following:

35 (1) The employee's disability has deteriorated to the
36 point where the worker is unable to meet the physical
37 demands of the first plan.

38 (2) The first plan is disrupted due to circumstances
39 beyond the control of the employee.

1 (3) Failure by the employer to provide timely service
2 required by this article and the vocational rehabilitation
3 plan when the plan has not been completed.

4 The cost of the original and the additional plan plus all
5 other vocational rehabilitation costs shall not exceed the
6 overall cap and the counselor fee cap established in
7 subdivision (c) of Section 139.5.

8 (d) Notwithstanding subdivision (c), an employee
9 may apply to the rehabilitation unit for approval of a
10 second vocational rehabilitation plan—~~which~~ *that* exceeds
11 the overall cap provided for in subdivision (c) of Section
12 139.5 if all of the following conditions are met:

13 (1) The employee has a permanent disability rating of
14 25 percent or greater. In reaching this determination, the
15 rehabilitation unit shall consider any treating physicians'
16 reports.

17 (2) The first plan cannot be completed due to
18 circumstances beyond the control of the employee. Those
19 circumstances include the deterioration of the
20 employee's disability to the point where the worker
21 cannot meet the requirements of the first plan.

22 (3) The rehabilitation unit finds that a second plan is
23 necessary to provide the employee the opportunity for
24 suitable gainful employment. Approval for circumstances
25 other than a change in the employee's disability must be
26 based on objective and verifiable facts pursuant to rules
27 promulgated by the administrative director.

28 However, in no case shall the cost solely attributable to
29 the second plan exceed the overall cap and the counseling
30 fee cap contained in subdivision (c) of Section 139.5.

31 (e) Notwithstanding subdivision (c), an employee
32 may receive a second vocational rehabilitation plan that
33 exceeds the overall cap provided for in subdivision (c) of
34 Section 139.5 if the rehabilitation unit finds that the
35 employee cannot complete the plan because the school
36 or other training facility has closed or the worker has a
37 sudden and unexpected change in disability that renders
38 the plan inappropriate or other similar circumstances.

39 (f) Notwithstanding paragraph (2) of subdivision (a),
40 if a qualified injured worker returns to modified or

1 alternative work with the same employer or to work with
2 a different employer as a result of direct job placement
3 assistance and that employment terminates, other than
4 for cause, within 12 months of the date the employee was
5 employed at the modified or alternative work, and if that
6 work is unavailable in the labor market, the employer
7 shall be liable, subject to Section 4642, for additional
8 vocational rehabilitation services, provided that the
9 employer's liability for vocational rehabilitation services
10 shall terminate if the employee voluntarily quits prior to
11 the end of that 12-month period. To qualify for additional
12 vocational rehabilitation services, the employee shall
13 demonstrate an inability to compete for suitable gainful
14 employment with his or her existing skills.

15 (g) An employer shall not be liable to provide
16 vocational rehabilitation services at a location outside the
17 state, unless upon agreement of the employer and the
18 employee, or a determination by the Division of Workers'
19 Compensation that those services are more cost-effective
20 than similar services provided in the state.

